

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee  
Hon. Mary Ann Grilli and Hon. Susan D. Huguenor, Co-chairs  
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DATE: February 16, 2005

SUBJECT: Family Law: Ex Parte Request to View or Obtain Copy of Sealed  
Family Law Documents (approve form FL-317) (Action Required)

Issue Statement

In response to urgency legislation, the Judicial Council, effective January 1, 2005, approved numerous changes in its family law forms to alert litigants to the opportunity to seal documents containing information that identifies or locates their assets and debts. The council also approved a new optional form, *Ex Parte Application to Seal Financial Forms (Family Law)* (form FL-316). Several commenters on form FL-316 wrote that a form that would allow parties to obtain copies of documents in their own cases would be helpful. Form FL-317, *Ex Parte Request to View or Obtain Copy of Sealed Family Law Documents*, is designed to meet that request.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2005, approve form FL-317 to allow litigants, their counsel, and the local child support agency, if joined to the action, to view or obtain copies of documents in sealed family law files.

The proposed form is attached at page 5.

Rationale for Recommendation

Assembly Bill 782 (Stats. 2004, ch. 45 [Kehoe]) was chaptered as urgency legislation on June 7, 2004. It added sections 2024.5 and 2024.6 to the Family Code. New section 2024.6(b) provides that the Judicial Council form used to declare the assets and liabilities of the parties in a proceeding for dissolution of marriage, nullity of marriage, or legal separation must require the party filing the form to state whether

the form contains information that identifies or locates the parties' assets and liabilities.

At its October 15, 2004, meeting, the Judicial Council approved revisions to the forms used for this purpose: *Property Declaration (Family Law)* (form FL-160), *Income and Expense Declaration* (form FL-150), and *Financial Statement (Simplified)* (form FL-155). Revisions also were made to three other Judicial Council forms— *Judgment (Family Law)* (form FL-180), *Property Order Attachment to Findings and Order After Hearing (Family Law)* (form FL-344), and *Property Order Attachment to Judgment (Family Law)* (form FL-345) — that may be filled out with identifying information about the assets and debts of a party. A question was added to those forms asking the person completing the form whether it contains such information. The forms also contain a notice that if such information is listed, the document may be sealed in accordance with Family Code section 2024.6(a).

That new code section provides that “[u]pon request by a party to a petition for dissolution of marriage, nullity of marriage, or legal separation, the court shall order a pleading that lists the parties’ financial assets and liabilities and provides the location or identifying information about those assets and liabilities sealed. The request may be made by ex parte application.” To assist parties in sealing the affected documents, the council approved the optional form *Ex Parte Application and Order to Seal Financial Forms (Family Law)* (form FL-316). That form is designed to state the basis for the application and list the specific forms to be sealed. It assists court clerks in locating the forms and makes it clear that it is not the entire file that is to be sealed. It also helps clarify that this procedure for sealing is one of the exceptions noted in rule 243.1(a)(2) of the California Rules of Court.

When the new and revised forms were circulated, several commenters suggested that a form be developed that would allow the unsealing of documents sealed under Family Code section 2024.6(a). This is a concern particularly for self-represented litigants, who may lose documents and need a copy or who want to verify that the document filed with the court is the same as the document with which they were served.

In considering this request, the committee believes that many persons who would like to view or obtain a copy of a document in their case do not want the file unsealed. To address this need, the committee developed proposed form FL-317, *Ex Parte Request to View or Obtain Copy of Sealed Family Law Documents*. It would allow a party to view or obtain a copy of a document that has been sealed without unsealing the document. The proposed form would also allow the local child support agency to obtain any necessary documents if child support has been assigned to it under Family Code section 17400. The form has been designed as an ex parte request, since the documents will remain sealed and the parties should already have seen a copy of the requested documents.

Persons or agencies that want sealed documents unsealed—and thus opened for public inspection—may use the *Order to Show Cause* (form FL-300) or *Notice of Motion* (form FL-301) and an *Application for Order and Supporting Declaration* (form FL-310). When a requester checks the “other” box and explains the basis for the request, a noticed hearing will be set, allowing the requester to attempt to show good cause why the previously sealed documents should be unsealed and allowing the parties to state their positions.

While it would seem axiomatic that litigants would have the right to obtain copies of documents in their own cases, commenters have raised concerns about whether that right will be clear to clerks or to the litigants themselves. This is due to the fact that there is no provision in new Family Code 2024.6 for an exception allowing parties or their counsel to obtain documents in a file that has been sealed to prevent disclosure of locating or identifying financial information. This compares to Senate Bill 1284 (Stats. 2004, ch. 102 [Morrow]), which enacted new Family Code section 3025, mandating that custody evaluations be placed in a confidential portion of a court file. That statute explicitly allows access to the confidential portion for the following people: to the parties to the proceeding and their attorneys, a federal or state law enforcement officer, a judicial officer, a court employee or family law facilitator and children’s counsel appointed under Family Code section 3150. It also compares to Family Code section 7643(b) regarding paternity files, which provides: “Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys.” Family Code section 2024.6 lacks such a statutory exception.

On February 28, 2005, Judge Roy L. Paul of the Los Angeles Superior Court found that Family Code section 2024.6 is unconstitutional as it violates the first amendment. The case will almost certainly be appealed.

#### Alternative Actions Considered

The committee considered not creating a new form, but determined that it was important to give parties an easy mechanism for getting copies of any documents filed in their action.

#### Comments From Interested Parties

An invitation to comment on the proposal for form FL-317 was circulated from December 8, 2004, through February 4, 2005, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. Together these lists include judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. The proposal was also circulated to legal services organizations and family law specialists.

Eighteen comments were received.<sup>1</sup> Nine commenters indicated that they agreed with the proposed form and made no suggestions for changes. Four noted only a typographical error, and others requested small clarifying changes.

One suggested that we add a provision allowing attorneys of record to obtain copies and the committee has added that provision.

Three commenters responded specifically to the question of whether the form was necessary. Two said that it was very helpful for self-represented litigants, and one of the two encouraged the development of an information sheet to more fully explain the procedure. The committee believes such an information sheet would be helpful and will ask staff to develop it a handout and for the Online Self-Help Center.

One commenter thought that this form was unnecessary and suggested that the council instead adopt the procedure used in paternity cases, dispensing with the need for a form to request access to the file. The committee was supportive of a simpler procedure but—given the difference in the statutory language allowing parties and their counsel to get access in paternity cases, as described above—determined that a form currently is necessary to ensure that parties and their counsel have easy access to documents. However, the committee agreed that notice to the other parties of the request to obtain previously served documents is not necessary. Therefore, the provision requesting proof of service of the ex parte notice regarding the request for documents has been deleted from the form.

The proposed form with modifications based upon the comments attached was reviewed by the Joint Rules Subcommittee of the Trial Court Presiding Judges Committee and the Court Executives Advisory Committee on March 2, 2005. That committee recommended that the Judicial Council approve the form with the clarification that the requestor pay the costs of photocopying, if any, and that the local child support agency must have been previously joined as a party to the action to obtain copies of documents in the case. That committee discussed the fact that Family Code 2024.6 has been declared unconstitutional in a case in the Los Angeles Superior Court as a violation of the first amendment. They recommended that pending full appellate review of this issue, this form should be approved.

#### Implementation Requirements and Costs

The costs associated with this proposal are the costs of printing new forms.

#### Attachments

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<sup>1</sup> A table showing the comments and the committee's responses is attached at page 6.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):     <div style="display: flex; justify-content: space-between;"> <div>           TELEPHONE NO. :            E-MAIL ADDRESS (Optional):            ATTORNEY FOR (Name):         </div> <div>           FAX NO. (Optional):         </div> </div>	<b>FOR COURT USE ONLY</b>   <div style="font-size: 24pt; font-weight: bold;">DRAFT 17</div> <div style="font-size: 24pt; font-weight: bold;">03/14/05 mc</div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
<b>EX PARTE REQUEST TO VIEW OR OBTAIN COPY OF SEALED FAMILY LAW DOCUMENTS</b>	CASE NUMBER:

1. Request to view or obtain a copy of sealed documents.
- a. ☐ I am the ☐ petitioner ☐ respondent ☐ attorney of record for petitioner or respondent in this action. I would like to view or obtain a copy of the documents listed in item 2 and request that they remain sealed under Family Code section 2024.6.
- b. ☐ I am an agent of the local child support agency (LCSA), which has been joined to the action to establish, modify, or enforce a support order on behalf of the ☐ petitioner ☐ respondent ☐ other (specify):

I would like to view or obtain a copy of the documents listed in item 2, related to the parties' financial information, and request that they remain sealed.

If you are not a person specified above or if you want these documents unsealed, you must complete an *Order to Show Cause* (form FL-300) or a *Notice of Motion* (form FL-301) and an *Application for Order and Supporting Declaration* (form FL-310) explaining your reasons for this request.

2. **Documents I want:** **Date filed (if known)**
- a.
- b.
- c.
- d.
- ☐ Continued on Attachment 2.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY)

### ORDER

The court having reviewed this request and the listed documents, the person making the request may view or obtain a copy of the documents listed above with the exception of:  
 subject to payment of the appropriate copying costs by the requestor. The requestor must use these documents only in a legally authorized manner.

Date:

JUDICIAL OFFICER

## W05-02

Family Law: *Ex Parte Request to View or Obtain Copy of Sealed Family Law Documents*  
(approve form FL-317)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Patricia Garcia Superior Court of San Diego County	AM	N	1. Item 1 (a), Change to "...listed in item 2..."  2. Item 1 (b), add, "...you must complete an OSC or a Notion of Motion..."	1. Agree. That change has been made. 2. Agree. That change has been made noting that an <i>Order to Show Cause</i> form FL-300 may also be used.
2.	Hon. Laura Masunaga Superior Court of Siskiyou County	A	N	Agree with proposed changes.	No response required.
3.	Mr. Lee Pliscon Attorney California Rural Legal Assistance Marysville	AM	N	There appears to be a typo in paragraph 1(a). Should read "Item 2" not "Item 3".	Agree. That change has been made.
4.	Ms. Cathy Scoggin Superior Court of Yolo County	A	N	How will this affect the Department of Child Support Services (DCSS) as well as the court's ability to obtain and use financial information necessary to determine a guideline child support order?	This would allow DCSS or their Local Child Support Agency (LCSA) to obtain a copy of a sealed Income and Expense Declaration (form FL-150) if they have been joined to a case to establish, modify or collect child support.
5.	Ms. Barbara Suskind Attorney/Mediator Pleasant Hill	A	N	Agree with proposed changes.	No response required.
6.	Ms. Keri Griffith Court Program Manager Superior Court of Ventura County	AM	N	I would like the order simplified so that the judicial officer does not have to check a box in the order for each document to be copied. Perhaps a box to allow the judge to indicate "as requested" with an area to list exceptions only when needed. I tend to believe that the majority of the orders will be granted in whole, but there will be exceptions.	Agreed. This change has been made.

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7.	Ms. JoAnn Johnson Family Court Facilitator Superior Court of Ventura County	N	N	<p>1. I am not sure that another form will be beneficial. The discussion portion suggests that this will assist self-represented litigants who need copies of documents from their files. Most do not know the title of the document or when it was filed, information required by the new form.</p> <p>2. My proposal would be to treat sealed portions of Dissolution/ Legal Separation files the same as paternity files. Paternity files are confidential, therefore no one except the parties or their attorneys of record can see the files, let alone obtain copies. Sealed documents can be placed in a separate section of the file and only released to the parties or attorneys. DCSS would be given access upon a showing that a request for enforcement has been made or if the agency is already a party to the case. There should not be a need to give notice to the other party. These documents should have already been served on the other party if the requesting party is getting a copy of their own documents. If requesting a copy of documents filed by the other party, the other party should have already served them on the requesting party, therefore there should be no objection.</p>	<p>1. Agree that many litigants will not know the names of the forms, but may have a general idea that will be helpful for court clerks. Have amended the line for date filed to “date filed – if known.”</p> <p>2. The difficulty with this proposal to treat the sealed portions of the Dissolution/Legal Separation files the same as paternity files is that the statutory language for the paternity is different. Family Code section 7643 regarding paternity provides that (a)...except as provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding... are subject to inspection only in exceptional cases upon an order of the court for good cause shown. Section (b) provides that “Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection by the parties to the action and their attorneys.” Such a statutory exception is not contained in Family Code section 2024.6. Section 2024.6 (a) requires that nothing sealed pursuant to this section may</p>





**Family Law: *Ex Parte Request to View or Obtain Copy of Sealed Family Law Documents***  
(approve form FL-317)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				required documents. Please note that under the current version, the form instructs Section 1(a) litigants to list the requested documents in item 3, however, there is no place within item 3 for the requested documents to be listed.	
10.	Ms. Diane Wasznicky Family Law Executive Committee, State Bar of California (FLEXCOM)	A	Y	<p>1. Concern has been expressed that FL-316 does not provide the opposing party any notice or opportunity to object to the request. It is the perception of these FLEXCOM members that the underlying statute did not intend to prohibit any objection from the opposing party as to whether the documents requested should be sealed.</p> <p>2. It appears that there is a basis for a form such as FL-317.</p>	<p>1. Form FL-316 specifically provides at item 4) that the other side has been provided notice of the request to seal documents and requires that a proof of service of ex parte application be attached. The committee will encourage courts to check for that proof of service.</p> <p>2. No response required.</p>
11.	Hon. Robert Schnider Superior Court of Los Angeles County	AM		<p>1. Counsel of record for a party should also be able to make the request. In section 1(a) change to "... <input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Counsel of record..."</p> <p>2. It's worth noting that nothing in the statute specifically allows the LCSA to get information.</p>	<p>1. Agree. That change has been made, referring to "Attorney of record."</p> <p>2. Agree.</p>
12.	Hon. Ronald L. Bauer Superior Court of Orange County	AM		<p>1. Add a comma after "financial information" in the second sentence of line 1(b)</p> <p>2. Delete line 2(e) to allow more space</p> <p>3. Replace the word "application" with "request" to match the title of the form in line 3</p> <p>4. Capitalize the name of the form in line 3 ("Ex</p>	<p>1. Agree. That change has been made.</p> <p>2. Agree. That change has been made.</p> <p>3. Agree. That change has been made.</p> <p>4. Agree. The committee is</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				Parte Request”)  5. Replace the word “application” with “request” in the first line of the Order.	suggesting that the notice requirement, and hence this line, be deleted.  5. Agree. That change has been made.
13.	Mr. Dean J. Zipser President, Orange County Bar Association	A	Y	Agree with proposed changes.	No response required.
14.	Mr. Jose O. Guillen Executive Officer Superior Court of Imperial County	A	Y	Agree with proposed changes.	No response required.
15.	Ms. Grace Anders Program Manager Superior Court of Solano County	A	N	Agree with proposed changes.	No response required.
16.	Ms. Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services, State Bar of California (SCDLS)	A	Y	SCDLS believes that approval of form FL-317 is very important to self-represented litigants – especially victims of domestic violence - who often need copies of documents filed in their cases. This form will be of assistance to both self-represented litigants and court clerks.	No response required.
17.	Ms. Kristy Johnson Child Support Directors’ Association, Judicial Council Forms Subcommittee	AM	Y	Correction to item 1a.: “I request a copy of the documents listed in item 3 <u>2</u> and request...”  <u>Item 3</u> : Because no “other party” is indicated on this form, recommend the following change: “I have given notice to <del>the other</del> <u>all interested parties</u> in this case.”	Agreed. This change has been made.  Based upon other comments, we are proposing that the notice requirement be deleted. Since the term “all interested parties” could interpreted very broadly, if a notice

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					requirement is included, this will be rephrased as "all parties."
18.	Mr. Mike Braverman Assistant Division Chief Family Law Superior Court of Los Angeles	AM	N	<p>"Therefore, ...it is ordered that the documents listed .... be photocopied..."</p> <p>The wording is ambiguous as to whether we can charge for copying those documents. Being "ordered" to make photocopies may not allow us to charge the party for those copies. Was it the intent that we not charge? If we can charge for copying, is there still time to change the wording to indicate that fees may apply?</p>	<p>The intent was not to prohibit the court from charging reasonable fees associated with photocopying. Language has been added to the form to clarify that reasonable photocopying costs may be charged.</p>

## Assembly Bill No. 782

### CHAPTER 45

An act to repeal and add Section 2024.5 of, and to add Section 2024.6 to, the Family Code, relating to court records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 7, 2004. Filed with  
Secretary of State June 7, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 782, Kehoe. Court records: family law.

Existing law generally recognizes court records as public records, unless a specific exception applies. Under existing law, one exception with respect to dissolution matters allows social security numbers of persons involved to be kept in the confidential portion of court files.

This bill would establish procedures for keeping the location or identifying information about the assets and liabilities of the parties in a dissolution matter sealed. The bill would require a related Judicial Council form to be revised no later than July 1, 2005, in accordance with those procedures and would make other related changes. The bill would also repeal the provision described above which allows social security numbers to be kept in a confidential portion of the court files. The bill would instead authorize a petitioner or respondent to redact social security numbers from pleadings, attachments, documents, or other material filed with the court, except as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2024.5 of the Family Code is repealed.

SEC. 2. Section 2024.5 is added to the Family Code, to read:

2024.5. (a) Except as provided in subdivision (b), the petitioner or respondent may redact any social security number from any pleading, attachment, document, or other written material filed with the court pursuant to a petition for dissolution of marriage, nullity of marriage, or legal separation. The Judicial Council form used to file such a petition, or a response to such a petition, shall contain a notice that the parties may redact any social security numbers from those pleadings, attachments, documents, or other material filed with the court.



(b) An abstract of support judgment, the form required pursuant to subdivision (b) of Section 4014, or any similar form created for the purpose of collecting child or spousal support payments may not be redacted pursuant to subdivision (a).

SEC. 3. Section 2024.6 is added to the Family Code, to read:

2024.6. (a) Upon request by a party to a petition for dissolution of marriage, nullity of marriage, or legal separation, the court shall order a pleading that lists the parties' financial assets and liabilities and provides the location or identifying information about those assets and liabilities sealed. The request may be made by ex parte application. Nothing sealed pursuant to this section may be unsealed except upon petition to the court and good cause shown.

(b) Commencing not later than July 1, 2005, the Judicial Council form used to declare assets and liabilities of the parties in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties shall require the party filing the form to state whether the declaration contains identifying information on the assets and liabilities listed therein. If the party making the request uses a pleading other than the Judicial Council form, the pleading shall exhibit a notice on the front page, in bold capital letters, that the pleading lists and identifies financial information and is therefore subject to this section.

(c) For purposes of this section, "pleading" means a document that sets forth or declares the parties' assets and liabilities, income and expenses, a marital settlement agreement that lists and identifies the parties' assets and liabilities, or any document filed with the court incidental to the declaration or agreement that lists and identifies financial information.

(e) The party making the request to seal a pleading pursuant to subdivision (a) shall serve a copy of the pleading on the other party to the proceeding and file a proof of service with the request to seal the pleading.

(f) Nothing in this section precludes a party to a proceeding described in this section from using any document or information contained in a sealed pleading in any manner that is not otherwise prohibited by law.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary that this act take effect immediately as an urgency statute because the records that this act seeks to protect may disclose identifying information and location of assets and liabilities, thereby subjecting the affected parties and their children, as well as their assets



and liabilities, to criminal activity, violations of privacy, and other potential harm.

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92

